

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

**BMS CLASS ACTIONS**

Judge Patti B. Saris

**CLASS PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER GRANTING  
PRELIMINARY APPROVAL OF THE BMS SETTLEMENT, AND APPROVING THE  
FORM AND METHOD OF NOTICE TO THE CLASS**

Class Plaintiffs move for entry of an order granting preliminary approval of the proposed Settlement Agreement and Release of the BMS Group, and approval of the form and manner of notice to the Class.

In support of this motion, Class Plaintiffs file herewith their Memorandum of Law in Support of Motion for Preliminary Approval of the BMS Settlement and Approving the Form and Method of Notice to the Class (the "Supporting Memorandum"), along with Exhibit 1 thereto, which contains the following documents:

1. Settlement Agreement and Release of the BMS Group
2. Exhibit A – [Proposed] Order Granting Preliminary Approval of the BMS Class Settlement, Directing Notice to the Class and Scheduling Fairness Hearing
3. Exhibit B – [Proposed] Forms of Notice
4. Exhibit C – [Proposed] Final Order and Judgment Granting Final Approval to Proposed Class Action Settlement with the BMS Group, Approving Proposed Allocation of Settlement Funds, and Approving Class Counsels' Application for Attorneys Fees, Reimbursement of Litigation Expenses and Incentive Awards to Class Representatives

5. Exhibit D – Class Escrow Agreement
6. Exhibit E – BMS Termination Rights (FILED UNDER SEAL)
7. Exhibit F – Distribution Plan and Claims Process
8. Exhibit G – Notice Plan

For reasons detailed in the Supporting Memorandum, Class Plaintiffs respectfully request that the Motion be granted and the Court enter an order: (i) granting Preliminary Approval of the Settlement; (ii) certifying the Settlement Classes; (iii) appointing Settlement Class counsel; (iv) scheduling a Fairness Hearing and establishing all related deadlines; (v) directing that Notice be provided to the Classes in accordance with the Notice Plan; and (vi) ordering a stay of all proceedings in this action vis-à-vis BMS until the Court renders a final decision regarding the approval of this Settlement

DATED: August 4, 2009.

By /s/ Steve W. Berman  
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**CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on March 7, 2008, I caused copies of **CLASS PLAINTIFFS' AND TRACK TWO DEFENDANTS' JOINT MOTION FOR ENTRY OF AN ORDER GRANTING PRELIMINARY APPROVAL OF THE TRACK TWO SETTLEMENT, CERTIFYING CLASSES FOR PURPOSES OF SETTLEMENT, DIRECTING NOTICE TO THE CLASSES AND SCHEDULING FAIRNESS HEARING** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

**/s/ Steve W. Berman**

Steve W. Berman